



DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2022-0011]

Privacy Act of 1974; System of Records

AGENCY: U.S. Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Homeland Security (DHS) proposes to modify and reissue an existing DHS system of records titled, “DHS/ALL-033 Reasonable Accommodations Records System of Records.”

This system of records allows the Department to collect and maintain records on employees and applicants for employment who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act Amendments of 2008; Title VII of the Civil Rights Act, as amended, and/or pursuant to public health authorities and associated guidance. DHS is updating this System of Records Notice (SORN) to provide more transparency as to the purpose; add additional authorities for the collection of information; update the categories of records; modify and add routine uses; and update retention policies. This notice also clarifies DHS’s collection, use, maintenance, and dissemination of records needed to process, manage, maintain, and resolve reasonable accommodation requests based on a medical condition/disability or a sincerely held religious belief, practice or observance. This modified system will be included in DHS’s inventory of record systems.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This modified system will be effective upon publication. New or modified routine uses will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2022-0011

by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

Instructions: All submissions received must include the agency name and docket number DHS-2022-0011. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: DHS Disability Employment Program Manager, (202) 357-1264, Office for Civil Rights and Civil Liberties, or Accessibility@hq.dhs.gov, Office of Accessible Systems and Technology, U.S. Department of Homeland Security, Washington, D.C. 20528. For privacy questions, please contact: Lynn Parker Dupree, (202) 343-1717, Privacy@hq.dhs.gov, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to modify an existing system of records titled, “DHS/ALL-033 Reasonable Accommodations Records System of Records,” and last published at 76 Fed. Reg. 41274 (July 13, 2011). This system allows the Department to collect and maintain records on applicants for employment and employees with a medical

condition/disability and/or a sincerely held religious belief, practice, or observance who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) Amendments of 2008, Title VII of the Civil Rights Act of 1964, and/or pursuant to public health authorities and associated guidance.¹

Sections 501, 503, and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) Amendments of 2008, prohibit discrimination on the basis of disability and require federal agencies, employers who are federal contractors, and programs that receive federal financial assistance to provide reasonable accommodation to qualified individuals with disabilities, including those who are employees or applicants for employment, unless providing the accommodation would pose an undue hardship. Section 508 of the Rehabilitation Act also requires federal agencies to make their electronic and information technology accessible to people with disabilities. The purpose of reasonable accommodations is to provide modifications or adjustments to: 1) the job application process that enables a qualified applicant or individual with a medical condition/disability to enjoy equal employment opportunities available to persons without a medical condition/disability; 2) the work environment; and/or 3) the manner in which a position is customarily performed. Reasonable accommodations may include, but are not limited to: 1) making existing facilities readily accessible to and usable by individuals with disabilities; 2) job restructuring, modification of workplace policies, work schedules or place of work, extended leave, telecommuting, or reassignment to a vacant position; and/or 3) acquisition or modification of equipment or devices, including computer software and hardware, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers and/or interpreters, personal assistants, service

¹ Even in cases where an individual's medical condition does not meet the legal definition of "disability" to be entitled to an accommodation under the Rehabilitation Act, in some limited circumstances an agency may grant and provide accommodations based upon other medical considerations.

animals, and other similar accommodations.

This system also allows the Department to collect and maintain records on applicants for employment and employees who requested or received a religious accommodation by the Department as required by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e (Title VII); 29 CFR 1605.2. Section 701(j) of Title VII requires federal agencies to reasonably accommodate an employee or prospective employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless the accommodation would result in undue hardship. A reasonable religious accommodation is an adjustment to the work environment that will allow the employee to comply with his or her religious beliefs. The duty to accommodate may result in an exception from, or adjustment to, an existing work requirement to allow an employee or applicant to observe or practice his or her religion. Religious accommodation requests often relate to work schedules, dress and grooming, or religious expression or practice while at work. Religious accommodations may include, but are not limited to, flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

DHS is updating this System of Records Notice (SORN) for several reasons, to include 1) providing additional transparency as to the purpose; 2) adding additional authorities for the maintenance of the collection; 3) updating categories of records; 4) modifying and adding routine uses; and 5) updating retention policies.

The purpose of this System of Records Notice is being updated to make it clear that this system covers the collection of information related to both medical/disability and religious accommodation requests. These accommodation requests include, but are not limited to, requests for modifications to workplace safety protocols and related to public health mitigation measures, such as use of Personal Protective Equipment (PPE), physical distancing, immunization requirements, testing, travel, and quarantine requirements. DHS

determines accommodation requests in accordance with applicable laws, regulations, and Department policies and guidance. By requesting an accommodation, employees or applicants for federal employment are authorizing DHS to collect and maintain a record of the information submitted to support the medical condition/disability or religious accommodation request.

The authorities covering the maintenance of this system and the collection of this data are being expanded to include all applicable authorities. In addition to the authorities listed in the previous notice (Sections 501 and 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act (ADA) Amendments of 2008; Executive Order 13164 (July 28, 2000); and Executive Order 13548 (July 10, 2010)), the following authorities also apply: Sections 503 and 508 of the Rehabilitation Act of 1973; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e; Section 202(d) of the E-Government Act of 2002, Accessibility to Persons with Disabilities; 36 CFR part 1194, Electronic and Information Technology Accessibility Standards; 6 CFR part 15, Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security; 29 CFR Part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act; 29 CFR 1605.2, Reasonable accommodation without undue hardship as required by section 701(j) of Title VII of the Civil Rights Act of 1964; 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021); and 5 U.S.C. chapters 33 and 63 and Executive Order 12196, Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980).

The categories of records are being updated to provide more transparency on the information that is collected for medical condition/disability and religious accommodations requests, including requests specifically relating to public health

mitigation measures such as PPE, physical distancing, immunization requirements, testing, travel, and quarantine requirements. The last published routine use (E) is being modified and a new routine use (F) is being added to conform to Office of Management and Budget Memorandum M-17-12. The last published routine uses (I) and (J) have been removed, and a new routine use (L) has been added to more clearly articulate how information sharing may be conducted with a federal agency or entity when needed to evaluate, process, adjudicate, and/or arbitrate a claim or appeal filed by a DHS employee or applicant arising out of or relating to the individual's request for reasonable accommodation. In addition, minor edits have been made to existing routine use (K), now routine use (J) to account for information sharing with appropriate third parties contracted by the Department to investigate a complaint or appeal filed by an employee or applicant, in addition to existing permissible sharing for purposes for facilitating and conducting mediation or other alternative dispute resolution (ADR) procedures or programs. Other routine uses have been re-lettered to account for these changes. The retention and disposition policy for these records is also being updated. Records will be held in accordance with National Archives and Records Administration General Records Schedule 2.3, item 20.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL-033 Reasonable Accommodations Records System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act codifies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the Judicial Redress Act, along with judicial review for denials of such requests. In addition, the Judicial Redress Act prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ALL-033 Reasonable Accommodations Records System of Records.

In accordance with 5 U.S.C. sec. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER: U.S. Department of Homeland Security (DHS)/ALL-033 Reasonable Accommodations Records System of Records.

SECURITY CLASSIFICATION: Unclassified.

SYSTEM LOCATION: Records are maintained at the DHS Headquarters in Washington, D.C., Component Headquarters offices, and field offices.

SYSTEM MANAGER(S): DHS Disability Employment Program Manager, (202) 357-1264, Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, Washington, D.C. 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: Sections 501, 503, 504, and 508 of the Rehabilitation Act of 1973 and Americans with Disabilities Act (ADA)

Amendments Act of 2008; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e; 29 U.S.C. 791, as amended, Employment of Individuals with Disabilities; Section 202(d) of the E-Government Act of 2002, Accessibility to Persons with Disabilities; 29 CFR Part 1605.2, Reasonable accommodation without undue hardship as required by section 701(j) of Title VII of the Civil Rights Act of 1964; 29 CFR Part 1614.203, Rehabilitation Act; 29 CFR Part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act; 36 CFR Part 1194, Electronic and Information Technology Accessibility Standards; 6 CFR Part 15, Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security; Executive Order 13164, Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation; 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), and 5 U.S.C. chapters 33 and 63; and Executive Order 12196, Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980).

PURPOSE(S) OF THE SYSTEM: The purpose of this system is to allow the Department to collect and maintain records on applicants for employment as well as employees who request or receive a reasonable accommodation by the Department as required by the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and/or Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e. This includes reasonable accommodations requested on both medical condition/disability and religious grounds. This system of records also allows DHS to track and report the processing of requests for reasonable accommodation Department-wide to comply with applicable law and regulations, to inform and determine appropriate workplace accommodations for particular employees, and to preserve and maintain the confidentiality of medical and religious information while

promoting the safety of federal workplaces and the health of the federal workforce consistent with the above-referenced authorities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Categories of individuals covered by this system include applicants for employment and employees, and under certain circumstances federal contractors, who request or receive reasonable accommodations under the Rehabilitation Act of 1973, as amended, and/or Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e. This also includes authorized individuals or representatives (e.g., family member, attorney) who file requests for reasonable accommodation on behalf of an applicant for employment or employee, as well as former employees who requested or received reasonable accommodation during their employment with the Department.

CATEGORIES OF RECORDS IN THE SYSTEM: Records in this system include the name of the individual seeking accommodations; the requester's reasonable accommodation request and supporting documentation; the requestor's status (i.e., applicant, contractor, or current employee); the date the accommodation request was initiated; the requestor's job position (i.e., occupational series, grade level, and agency component), work/duty location, and job duties; the nature/type of accommodation(s) sought; the amount of time taken to process the request; whether the request was granted or denied and, if denied, the reason for the denial; and the sources of technical, physical, or other assistance consulted in trying to identify possible reasonable accommodations.

Also, for accommodations based on religion, the records will include information on how complying with a particular work requirement would substantially burden the requestor's exercise of a sincerely held religious belief, practice or observance, how long the belief has been held, the reason for seeking a religious accommodation, and other information specific to the requested accommodation to determine whether DHS is legally required to grant the request. For reasonable accommodations requests specifically related

to public health mitigation measures such as PPE, physical distancing, immunization requirements, testing, travel, and quarantine requirements, this system will also include information that individuals are requested to submit regarding how complying with such mitigation measures would substantially burden an individual's religious exercise or conflict with their sincerely held religious beliefs, practices, or observances.

For accommodations based on a medical condition/disability, the records will include information such as the nature of the disability/medical condition, the functional limitations caused by the disability/medical condition, how the requested accommodation would address the functional limitations, medical documentation of the disability/medical condition, and other information specific to the requested accommodation to determine whether DHS is legally required to grant the request. For reasonable accommodations requests specifically related to public health mitigation measures such as PPE, physical distancing, immunization requirements, testing, travel, and quarantine requirements, this system will also include information that individuals are requested to submit regarding how the medical condition/disability prevents the individual from complying with such public health and safety mitigation measures.

Additional information collected to process reasonable accommodation requests includes the name, title, email address, and phone number of the requestor (or their representative); the requestor's operating administration, pay grade, or band; supervisor information; and other information collected from requestors to make a determination regarding a specific medical and/or religious accommodation request.

RECORD SOURCE CATEGORIES: Information is obtained from DHS employees and applicants and/or their medical practitioners, and in certain circumstances federal contractors, or authorized individuals acting on behalf of employees, applicants, and federal contractors who are requesting or have received medical/disability and/or religious accommodations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND PURPOSES OF SUCH USES: In addition to those disclosures generally permitted under 5 U.S.C. sec. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. sec. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agency conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation or proceeding and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. sec. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals,

DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil

discovery, litigation, or settlement negotiations or in connection with criminal law proceedings, when it is relevant and necessary to the litigation or proceeding.

J. To appropriate third parties contracted by the Department to investigate a complaint or appeal filed by an employee or applicant, or to facilitate and conduct mediation or other alternative dispute resolution (ADR) procedures or programs.

K. To the Department of Defense (DOD) for purposes of procuring assistive technologies and services through the Computer/Electronic Accommodation Program in response to a request for reasonable accommodation.

L. To the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), Equal Employment Opportunity Commission (EEOC), Office of Special Counsel (OSC), Office of Personnel Management (OPM), or another appropriate federal agency or entity when needed by that agency or entity to evaluate, process, adjudicate, and/or arbitrate a claim or appeal filed by a DHS employee or applicant arising out of or relating to the employee's or applicant's request for reasonable accommodation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: DHS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: DHS may retrieve records by name of requester, employing component or directorate, or any unique identifying number assigned to the request, if applicable.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS: Records will be held in accordance with National Archives and Records Administration, General Records Schedule 2.3, Employee Relations Records, item 20, Reasonable accommodation case files. These records include individual employee files created, received, and maintained by reasonable accommodation, diversity/disability

programs, employee relations coordinators, supervisors, administrators, or Human Resource specialists containing records of requests for reasonable accommodation and/or assistive technology devices and services that have been requested for or by an employee. This includes requests, approvals and denials, notice of procedures for informal dispute resolution or appeal processes, forms, correspondence, records of oral conversations, policy guidance documents, medical records, supporting notes, and documentation. These records are temporary and will be destroyed three (3) years after employee separation from the agency or all appeals are concluded, whichever is later. However, longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: DHS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES: Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Component Privacy Officer and Component Freedom of Information Act (FOIA) Officer, whose contact information can be found at <http://www.dhs.gov/foia> under “Contact Information.” If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, D.C. 20528-0655, or electronically at <https://www.dhs.gov/dhs-foia-privacy-act-request-submission-form>.

Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about the individual be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. sec. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. An individual may obtain more information about this process at <http://www.dhs.gov/foia>. In addition, the individual should, whenever possible:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, DHS may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES: For records covered by the Privacy Act or covered Judicial Redress Act records, individuals may make a request for amendment or

correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES: See “Record Access Procedures” above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: None.

HISTORY: 76 Fed. Reg. 41274 (July 13, 2011).

Lynn P. Dupree,

Chief Privacy Officer,

U.S. Department of Homeland Security.

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